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REFERENCE TITLE: **developmental disabilities**

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HB 2400

Introduced by
Representatives Hershberger, Thompson

AN ACT

**AMENDING SECTIONS 36-557, 36-559 AND 36-562, ARIZONA REVISED STATUTES;
RELATING TO DEVELOPMENTAL DISABILITIES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-557, Arizona Revised Statutes, is amended to
3 read:

4 36-557. Purchase of community developmental disabilities
5 services; application; contracts; limitation

6 A. The department may use state and federal ~~funds~~ MONIES appropriated
7 or otherwise available to it for this purpose to assist in the establishment
8 and maintenance of local developmental disability services by public or
9 private nonprofit or profit agencies. The ~~funds~~ MONIES may be expended as
10 professional fees for service, in contracts for advancement or reimbursement
11 or in another appropriate manner and may be used for any purpose necessary to
12 the provision of local developmental disability services. ~~They may~~ THE
13 DEPARTMENT SHALL not ~~be used~~ USE THESE MONIES for departmental salaries, care
14 of developmentally disabled persons by the department or any other purpose
15 within the department itself, ~~but they may be used~~ USE THE MONIES for
16 consultation to the department in the interest of local programs.

17 B. AN INDIVIDUAL PROVIDER OR a local public or private nonprofit or
18 profit agency providing or intending to provide community developmental
19 disability services and desiring to contract with the department ~~for the~~
20 ~~furnishing of such~~ TO PROVIDE THESE services shall submit a program plan and
21 budget to the department on the forms and in the manner required by the
22 department. If the program meets departmental standards and is consistent
23 with the state plan of the department and the individualized service program
24 plan of the client, the department, notwithstanding the provisions of title
25 41, chapter 23, relating to procurement and including services pursuant to
26 section 36-2943, may contract with that INDIVIDUAL PROVIDER OR agency for
27 ~~such~~ THE REQUIRED services ~~as are required~~ and ~~upon such~~ ON terms ~~and~~
28 ~~conditions as~~ the department ~~shall require~~ REQUIRES. The contracts shall
29 provide that the provider of services ~~shall be~~ IS subject to a continuing
30 program evaluation by the department through progress reports, expenditure
31 reports, program audits or other appropriate evaluation techniques and to
32 ~~assure~~ ENSURE that the provider of service is in continued compliance with
33 the terms of the contract and the department's community developmental
34 disability service standards and requirements.

35 C. Contracts between the department and a school district or districts
36 ~~shall be~~ ARE subject to approval by the department of education.

37 D. This article does not make the department or the state responsible
38 for funding programs beyond the limits of legislative appropriation for the
39 programs. This article does not require a provider of services to provide
40 unreimbursed services to the department or its clients.

41 E. Contracts to provide community developmental disability services
42 shall require that:

43 1. The contractor ~~is obligated to~~ MUST operate a program or service in
44 strict accordance with the standards adopted for ~~such~~ THAT program or service
45 by the department.

1 2. If state funding is provided for a particular program the
2 contractor, to the extent of positions available ~~which~~ **THAT** are being
3 purchased by the department, shall provide services to a developmentally
4 disabled client who has been evaluated and placed by the department.

5 3. All contractors must carry liability insurance in amounts approved
6 by the risk management section of the department of administration and file
7 proof of ~~such~~ insurance with the risk management section. The director may
8 waive ~~such~~ **THIS** requirement on a case by case basis ~~upon~~ **ON** a finding that
9 insurance for ~~such~~ **THE** program or service is not practicably available at
10 affordable rates and that it is necessary that the program or service be
11 provided by the contractor.

12 4. All clients enrolled in programs ~~shall~~ have all the same specified
13 rights as they would have if enrolled in a program operated directly by the
14 state.

15 5. Except for emergency placement pursuant to section 36-560,
16 subsection N, payment shall not be made based on program services provided to
17 a client if a placement evaluation has not been made, and no individual
18 program has been prepared and when, ~~upon~~ **ON** such placement evaluation, no
19 recommendation has been made to enroll the client in the particular program
20 service.

21 This article does not require a contracted agency to provide unreimbursed
22 services to the department or a client of the department.

23 F. Contracts for the purchase of residential care services other than
24 those community residential settings licensed pursuant to this chapter ~~shall~~,
25 in addition to other general requirements applicable to purchase of care
26 contractors, **SHALL**:

27 1. Provide for mandatory inspection by the department every two years
28 for facilities other than group homes.

29 2. Provide for mandatory monitoring by the department for health,
30 safety, contractual and programmatic standards at least every ~~six~~ **TWELVE**
31 months **BY UNANNOUNCED VISITS**.

32 3. Provide for mandatory investigation by the department in response
33 to complaints within ten working days, except that in those instances ~~which~~
34 **THAT** pose a danger to the client, the department shall conduct the
35 investigation immediately. Health and safety complaints related to group
36 homes shall be referred to the department of health services on receipt. The
37 department of health services shall share all incident reports related to
38 health and safety with the division of developmental disabilities.

39 4. Except for group homes licensed by the department of health
40 services, specify the health and safety and sanitation codes and other codes
41 or standards applicable to the facility or to the operation of the facility
42 by the contractor other than group homes.

43 5. Provide for mandatory periodic reports to be filed by the provider
44 contractor with the department with respect to the operation of the facility.

6. Provide that the facility and the books and records of the facility and of the provider are subject to inspection at any time by employees of the department or designees of the department.

7. Provide that parents and guardians of developmentally disabled persons residing at the facility, members of the developmental disabilities advisory council, and members of other recognized and ongoing advocacy groups for developmentally disabled persons may inspect the facility at reasonable times.

G. Contracts for purchase of residential care services shall require a community residential setting, as defined in section 36-551, to be licensed pursuant to this chapter other than group homes licensed by the department of health services. **CONTRACTS FOR DAY OR WORK PROGRAMS SHALL BE MONITORED ANNUALLY BY VOLUNTEER INDEPENDENT ASSESSMENT TEAMS, DEPARTMENT STAFF OR VOLUNTARY ACCREDITING BODIES. THE DIVISION MAY WAIVE THE REQUIREMENT FOR AN ANNUAL MONITOR IF THE CONTRACTING AGENCY PROVIDES THE DIVISION WITH EVIDENCE OF ACCREDITATION IN GOOD STANDING. THE DIVISION SHALL DETERMINE THE QUALIFICATIONS FOR ACCREDITATION BODIES AND GOOD STANDING STATUS. VOLUNTEER MEMBERS OF INDEPENDENT ASSESSMENT TEAMS ARE NOT CONSIDERED TO BE STATE EMPLOYEES.**

H. The division shall ensure that all contracted developmental disabilities service providers rendering services pursuant to this chapter are reimbursed in accordance with title XIX of the social security act.

I. Any contract issued by the division shall include language outlining the provisions for the grievance and appeal procedure. The grievance process applicable to these contracts shall comply with title XIX of the social security act as implemented by department rules and section 36-563.

J. As a condition of contracts with any developmental disabilities service provider, the director shall require terms that conform with state and federal laws, title XIX statutes and regulations and quality standards. The director shall further require contract terms that ensure performance by the provider of the provisions of each contract executed pursuant to this article.

K. The division may establish a rate structure that ensures an equitable funding basis for private nonprofit or for profit agencies for services pursuant to subsection B of this section and section 36-2943. In each fiscal year, the division shall review and may adjust the rate structure based on the provisions of section 36-2959.

L. The division shall disclose to a service provider in the individual program plan defined by section 36-551 any historical and behavioral information necessary for the provider to be able to anticipate the client's future behaviors and needs.

Sec. 2. Section 36-559, Arizona Revised Statutes, is amended to read:

36-559. Eligibility for developmental disabilities programs, services and facilities

A. Except as provided in subsection B of this section, a developmentally disabled person is eligible to apply for developmental disabilities programs, services and facilities operated by, licensed and supervised by, or supported by the department if ~~such~~ THAT person:

1. Is a bona fide resident of the state of Arizona.

~~2. Is developmentally disabled as defined in this chapter and provides medical and psychological documentation of such developmental disability utilizing tests which are culturally appropriate and valid, or is an infant and as a result of tests performed pursuant to section 36-694, or other appropriate tests, there is strongly demonstrated potential that the infant is developmentally disabled or will become developmentally disabled.~~

2. PROVIDES MEDICAL AND PSYCHOLOGICAL DOCUMENTATION OF A DEVELOPMENTAL DISABILITY THAT IS BASED ON TESTS THAT ARE CULTURALLY APPROPRIATE, VALID AND PERFORMED BY QUALIFIED PROFESSIONALS.

3. IF AN INFANT, IS DEVELOPMENTALLY DISABLED OR HAS A STRONGLY DEMONSTRATED POTENTIAL OF BECOMING DEVELOPMENTALLY DISABLED BASED ON TESTS PERFORMED PURSUANT TO SECTION 36-694, OR OTHER APPROPRIATE TESTS.

4. IF AN ADULT, IS ELIGIBLE FOR INSTITUTIONAL SERVICES OR HOME AND COMMUNITY BASED SERVICES PURSUANT TO SECTION 36-2936 AND IS ENROLLED IN THE ARIZONA LONG-TERM CARE SYSTEM.

5. IF AN ADULT, IS NOT ELIGIBLE FOR INSTITUTIONAL SERVICES OR HOME AND COMMUNITY BASED SERVICES PURSUANT TO SECTION 36-2936 AND IS NOT ENROLLED IN THE ARIZONA LONG-TERM CARE SYSTEM. THE PERSON MUST SUBMIT FINANCIAL VERIFICATION THAT DEMONSTRATES THAT THE PERSON MEETS THE INCOME AND RESOURCE CRITERIA ELIGIBILITY IN THE ARIZONA LONG-TERM CARE SYSTEM. ASSETS HELD IN A TRUST QUALIFIED BY THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION PURSUANT TO ITS AUTHORITY UNDER SECTION 36-2934.01 ARE NOT COUNTED AS ASSETS FOR THE PURPOSE OF THIS PARAGRAPH.

B. After the department conducts preadmission screening pursuant to section 36-2936 and determines that a developmentally disabled person may be potentially eligible for the Arizona long-term care system pursuant to chapter 29, article 2 of this title, the person shall be referred to the Arizona health care cost containment system administration for an eligibility determination pursuant to section 36-2933, if either of the following applies:

1. The person is a new applicant who is not receiving services and applies for services pursuant to this chapter.

2. The person is eligible for services pursuant to this chapter and would receive services, other than case management, if state funding were available.

C. A person who is referred to the Arizona health care cost containment system administration shall first be determined eligible or

ineligible for the Arizona long-term care system, pursuant to chapter 29, article 2 of this title, before receiving services pursuant to this chapter. Applicants who voluntarily refuse to cooperate in the eligibility process are not eligible for services pursuant to this chapter. A form explaining loss of benefits due to a voluntary refusal to cooperate shall be signed by the applicant. Voluntary refusal to cooperate shall not be construed to mean the applicant's inability to obtain documentation required for eligibility determination.

D. The department shall determine eligibility. If the person is not eligible, the department of economic security shall refer the person to the department of health services for treatment as directed by the court to coordinate necessary and reasonable services. Services provided pursuant to this subsection are subject to the availability of funding.

Sec. 3. Section 36-562, Arizona Revised Statutes, is amended to read:

36-562. Schedule of financial contribution; review of payment order

A. Money for the support of a developmentally disabled person in a residential program operated or supported by the department, except for children placed in special foster homes as described in section 36-558.01, pursuant to sections 8-242, 8-514.01 and 8-845, shall be paid to the department, and by it deposited, pursuant to sections 35-146 and 35-147, and shall continue to be paid unless the person is terminated from ~~such~~ THE residential program. Credit shall be given for any periods of temporary absence, such as for home visits, vacations or other purposes.

B. The financial contribution by the parent of a developmentally disabled minor shall terminate ~~upon the~~ ON THAT PERSON'S eighteenth birthday ~~of such person~~. The financial contribution by parents on behalf of two or more developmentally disabled persons receiving developmental disabilities programs or services shall not exceed the maximum amount ~~such~~ THE parents would be required to pay if only one of ~~such~~ THE children were receiving the programs or services.

C. The department ~~shall~~ by rule SHALL prescribe a fee schedule for developmental disability residential programs AND SERVICES provided directly or indirectly by the department. The amount of annual liability of a developmentally disabled person or ~~his~~ THAT PERSON'S estate or parent for residential programs AND SERVICES provided shall be based on the percentage of gross income of the developmentally disabled person, ~~his~~ THAT PERSON'S estate or parent, as defined by section 61 of the United States internal revenue code, except that part of the gross income of a self-employed person ~~which~~ THAT results from the operation of ~~his~~ THAT PERSON'S business shall be adjusted by the deductions allowed in the internal revenue code relating to ~~such~~ THAT income in computing adjusted gross income.

D. The director shall review ~~his~~ THE order for payment for residential care AND SERVICES at least annually, and shall require the responsible person to update the financial information provided annually or at any time ~~upon~~ ON

request by the county board of supervisors or by the parent, guardian, or other person making ~~such~~ **THE** payments. ~~The provisions of~~ Section 36-563 ~~shall apply~~ **APPLIES** to any order or change in order for payment.

E. The responsible person shall furnish current financial information to the director ~~and to the appropriate county board of supervisors~~ at the times and on the forms and in the manner prescribed by the director, provided that ~~such~~ **THE** information ~~shall be held~~ **IS MAINTAINED** by the director ~~and the county board of supervisors to be strictly~~ **AS** confidential and ~~it shall~~ **IS** not ~~be~~ divulged except ~~in the instance where it is~~ **AS** necessary in connection with legal action.

F. A financial contribution ~~which shall~~ **THAT DOES** not exceed the actual cost of the programs and services provided may be required from the client or the parent, spouse or estate of a developmentally disabled person for the cost of any nonresidential developmental disability program or service operated by or supported by the department. The department ~~shall~~ by rule **SHALL** adopt a fee schedule for financial contributions. **EXCEPT AS PROVIDED PURSUANT TO SUBSECTION H OF THIS SECTION,** the amount of liability of a client or the parent, spouse or estate of a client for nonresidential services and programs or any combination of residential and nonresidential services and programs shall not exceed the amount of the fee prescribed for residential services in subsection C of this section. Counties are not required to contribute to the cost of nonresidential services or programs provided to clients.

G. **EXCEPT AS PROVIDED PURSUANT TO SUBSECTION H OF THIS SECTION,** the amount payable by the developmentally disabled person or ~~his~~ **THE PERSON'S** parent or estate for residential services shall be fixed by the director in accordance with the fee schedule prescribed in this section.

H. A PERSON WITH A DEVELOPMENTAL DISABILITY WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR THE PERSON'S ESTATE SHALL BE BILLED AT ONE HUNDRED PER CENT OF THE COST OF CARE IF THE PERSON'S COUNTABLE RESOURCES OR THE ASSETS OF THE PERSON'S ESTATE EXCEED THE RESOURCE LIMITS PRESCRIBED IN THE 20 CODE OF FEDERAL REGULATIONS SECTION 416.1205 FOR THE SUPPLEMENTAL SECURITY INCOME. ASSETS OF A PERSON WHO IS ENROLLED IN THE ARIZONA LONG-TERM CARE SYSTEM THAT ARE HELD IN A TRUST QUALIFIED PURSUANT TO SECTION 36-2934.01 ARE NOT COUNTED AS ASSETS FOR THE PURPOSES OF THIS SUBSECTION.

~~H.~~ **I.** Money paid by a client, parent or guardian shall be paid to the director and deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

~~I.~~ **J.** The department shall provide monthly billings to all persons responsible for paying for developmentally disabled residential or nonresidential services and programs provided directly or indirectly by the department. The department shall require all purchase of care providers to provide current lists of all persons receiving residential or nonresidential services and programs in facilities operated by ~~such~~ **THE** providers. The department shall forward reports of delinquent billings for residential and

1 nonresidential services and programs provided by the department or by
2 contractors to the attorney general for collection.

3 ~~J.~~ K. The department shall notify each client and the CLIENT'S parent
4 or guardian ~~of such client~~ for whom it has determined that contributions are
5 required for the cost of residential or nonresidential services and programs
6 that it reserves the right to terminate developmental disability residential
7 or nonresidential services and programs to a client for nonpayment of fees
8 required to be paid pursuant to this section.

9 ~~K.~~ L. Any person affected by an order of the director for payment of
10 costs of care may contest ~~such~~ THE order and request an administrative
11 hearing pursuant to section 36-563. Any person liable for the costs of care
12 of a client may appeal to the director, pursuant to section 36-563, for a
13 reduction in the amount of payment for ~~such~~ THE costs of care on the basis of
14 hardship.

15 ~~L.~~ M. ~~The provisions of~~ NOTWITHSTANDING subsections C and G of this
16 section ~~notwithstanding~~, the department may require clients who are receiving
17 residential programs and who receive income or benefits to contribute to the
18 cost of their support and maintenance, subject to the provisions of federal
19 laws and regulations. ~~Such~~ THE contributions ~~shall~~ ARE not ~~be~~ subject to ~~the~~
20 ~~provisions of~~ subsections A and ~~H.~~ I of this section. The department shall
21 adopt rules ~~which~~ TO determine the amount and means of payment of ~~such~~ THE
22 contributions, except that ~~in no event shall~~ the combined contribution made
23 on behalf of a client by a client or the client's parent or estate SHALL NOT
24 exceed the actual cost of the residential programs provided. A minimum of
25 thirty per cent of the client's income or benefits shall be retained for the
26 client's personal use.

27 Sec. 4. Exemption from rule making

28 A. For the purposes of this act, the department of economic security
29 is exempt from the rule making requirements of title 41, chapter 6, Arizona
30 Revised Statutes, for two years after the effective date of this act.

31 B. The department shall publish rules adopted pursuant to this section
32 pursuant to title 41, chapter 6, article 2, Arizona Revised Statutes.